IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

Crl.Rev.Pet.No. 1740 of 2007(B)

CMP.442/2007 (Crime No.146/2007 of Changanacherry police station)of JUDL. MAGISTRATE OF FIRST CLASS, CHANGANACHERRY

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REVN. PETITIONER: (PETITIONER)

SANJU M.SAYEED, S/O.MAJEED,
NIJIL MANZIL, CHANGANACHERRY.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS: (COUNTER PETITIONER & STATE)

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1. CIRCLE INSPECTOR OF POLICE,
CHANGANACHERRY.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

ADDL.R3. NIZAM, S/O. ABDUL KHADER,
M.A. MANZIL, AYAMPALLI, ALANCODE
VANCHIYOOR, CHIRAYINKEEZHU.

ADDL.R4. ARAVIND, HOUSE NO. V. 81,
NIRMALYAM, NEAR UDAYANOOR DEVI TEMPLE
MARUTHANKUZHI, THIRUVANANTHAPURAM.

ADDL.RESPONDENTS 3 &4 ARE IMPLEADED AS PER ORDER IN CRL.M.A. 5934/07 DATED 1-6-07.

BY PUBLIC PROSECUTORMR. C.M. KAMMAPPU
ADDL. R3 BY ADV. SRI.P.K.MUHAMMED

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15/06/2007, THE COURT ON 20-6-2007 PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.R.P.NO.1740 of 2007

DATED THIS THE 20th JUNE 2007

ORDER

The revision petition is field over the order in C.M.P.No.442/2007 in Crime No.146/2007 of Changanacherry police station vide petition filed under Section 451 Cr.P.C. The revision petitioner who is R.C. owner of Benz Car bearing Registration No. KL-07/Y-5555 filed a private complaint before the court below alleging offences under Sections 403 and 420 read with Section 34 I.P.C. against the additional 3rd and 4th respondents. It is his case that the first accused, who is known to him, borrowed the above car stating that the same is required in connection with the wedding of his sister, but he did not return the same. When he approached the first accused, he did not return the car but abused him. It was found that the car was in the custody of the 4th additional respondent who told him that the third respondent sold the car to him. According to the petitioner, hire purchase payments are to be made. The car was seized as per the search warrant of the Judicial First Class

Magistrate, Changanacherry. It is submitted that the car is lying in the police station exposed to sun and rain. He has sought for interim custody of the vehicle which was turned down by the court below as per the impugned order. He has also produced the copy of the receipt for the subsequent payment of the hire purchase dues.

2. The 3rd additional respondent who impleaded entered appearance and has objected to the application. According to him, as per agreement dated 30-1-1997 the car was handed over to him. According to him, he has paid a sum of Rs.50,000/- as advance as evident from the agreement. He has further stated that he has remitted the instalment dues towards the hire purchase. It is also submitted by counsel that he has also paid another sum of Rs.50,000/- to the petitioner. As per the agreement, the price of the car was fixed as Rs.4,05,000/- and Rs.50,000/- was paid on the date of the agreement. Rs.3 lakhs is due to the hire purchase finance company.

3. On a perusal of the C.D. it is seen that the additional 4th respondent to whom the vehicle was allegedly sold by the

additional 3rd respondent returned the car to the additional 3rd respondent as the original R.C.of the car was not given within the stipulated period. According to the additional 4th respondent, the 3rd respondent had also informed him that there was no pending dues towards the finance company , but he received the intimation from the Transworld Finance Company that three instalments at the rate of Rs.12,000/- is due . According to him, the price of the car was fixed as Rs.4,05,000/- and Rs.3 lakhs mentioned as due to the Finance Company. He had paid a sum of Rs.1,50,000/- to the 3rd respondent. The 3rd respondent returned the amount less Rs.1,50,000/- which was deducted for the user of the car by him.

4. It is admitted that the additional 3rd respondent has not submitted any petition under Section 451 Cr.P.C. before the Judicial First Class Magistrate Court for the custody of the car. Evidently, the complainant who is the R.C.owner would be liable to the financier. Although as per the C.D., the case of the complainant/petitioner as such does not appear to be correct. In the circumstances, I find that the damage, if any, caused to the

car and the dues to the financier would ultimately fall on the petitioner/complainant. In the circumstances, and also in view of the ratio of the decision of the Supreme Court in **Sunderbhai Ambalal Desai v. State of Gujarat, 2003(2)KLT 1089**, I find that the direction to keep the vehicle in the police station is not called for. Hence, the order of the court below is set aside. The court below is directed to release the vehicle to the petitioner/complainant on furnishing security for Rs.1,00,000/- and on such terms as may be specified immediately on receipt of this order.

The Crl.revision petition is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.R.P.NO.1740 of 2007-B

ORDER

20-6--2007